

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: BIRON W. HAILEY
JANICE LEE HAILEY aka
JANICE LEE HAMBLIN**

CASE NO. 09-12870-DWH-13

**ORDER GRANTING VANDERBILT MORTGAGE AND FINANCE, INC.'S MOTION
FOR RELIEF FROM THE AUTOMATIC STAY AND FOR
ABANDONMENT OF PROPERTY FROM DEBTORS' ESTATE**

On consideration before the court is the motion of Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") for relief from the automatic stay now protecting the interest of the Debtors, Biron W. Hailey and Janice Lee Hailey aka Janice Lee Hamblin ("Debtors"), in certain personality and realty and for abandonment of same from the Debtors' estate ("motion for relief") (Dkt. # 33); no response to the motion for relief having been timely by the Debtors, the Court finds same to be well taken and further finds and adjudicates as follows, to-wit:

1. This court has jurisdiction over the subject matter herein and the parties hereto pursuant to 28 U.S.C. §1334, 11 U.S.C. §362, and 11 U.S.C. §554, along with other related statutes and rules. This is a core proceeding as defined by 28 U.S.C. §157(b)(2)(A) and (G).
2. On March 12, 2007, Debtor Janice Lee Hailey aka Janice Lee Hamblin fka Janice Kokemueller executed a Note, Deed of Trust and Manufactured Home Rider to the Mortgage/Deed of Trust/Security Deed ("Rider") in the amount of \$35,460.35 for the benefit of Vanderbilt. To secure this indebtedness, Debtor Janice Lee Hailey aka Janice Lee Hamblin fka Janice Kokemueller granted Vanderbilt a valid first perfected lien interest in certain real property located in Lee County, Mississippi. To further secure this indebtedness, Debtor Janice Lee Hailey aka Janice Lee Hamblin fka Janice Kokemueller granted Vanderbilt a valid first perfected

security interest in one (1) 1999 General manufactured home bearing serial number GMHGA1089923668AB ("manufactured home"). Copies of the Note, Deed of Trust, Rider and related legal description, and Mississippi Certificate of Title for a Vehicle evidencing Vanderbilt's lien are attached to the motion for relief as part of collective Exhibit "1."

3. On June 5, 2009 ("petition date"), the Debtors filed their voluntary petition for relief pursuant to Chapter 13, Title 11 of the United States Code. Subsequent thereto, the Debtors filed a proposed amended Chapter 13 Plan of Reorganization ("Plan") which proposes, *inter alia*, for the Debtors to surrender and abandon their interest in the manufactured home and real property referenced herein to Vanderbilt. A copy of the Debtors' Plan is attached to the motion for relief as part of collective exhibit "1."

4. The indebtedness due under the Note, \$36,271.26 as of September 23, 2009, exceeds the combined value of the manufactured home and realty (approximately \$19,584.00 for the manufactured home according to the NADA Manufactured Housing Appraisal Guide and approximately \$8,000.00 for the realty). As such, there is no equity in the manufactured home and realty as contemplated by 11 U.S.C. §362(d)(2)(A). Furthermore, the manufactured home and realty are not necessary for the Debtors' effective reorganization as contemplated by 11 U.S.C. §362(d)(2)(B) since the Debtors propose to surrender and abandon same to Vanderbilt as evidenced by their Plan.

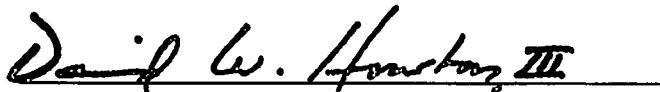
5. The automatic stay presently protecting the Debtors' interest in the manufactured home and realty is hereby lifted and, furthermore, the manufactured home and realty are hereby abandoned from the Debtors' estate pursuant to 11 U.S.C. § 554.

6. Upon the disposition of the manufactured home and realty referenced herein, Vanderbilt shall report any surplus to the Chapter 13 trustee and have the ability to file an unse-

cured claim should there be a deficiency balance after liquidation of same. In addition, any claims filed by Vanderbilt in this case are hereby reduced to the amounts already paid and withdrawn.

7. The provisions of Rule 4001(a)(3) of the Bankruptcy Code are hereby waived.
8. This Order shall survive the conversion or dismissal of this case.

SO ORDERED AND ADJUDGED, this 16th day of Oct, 2009.



HONORABLE DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE
NORTHERN DISTRICT OF MISSISSIPPI

THIS ORDER PREPARED BY:

JAMES P. WILSON, JR. (MS Bar #10783)
MITCHELL, MCNUTT & SAMS, P.A.
215 FIFTH STREET NORTH
POST OFFICE BOX 1366
COLUMBUS, MS 39703-1366
(662) 328-2316
Attorney for Vanderbilt Mortgage and Finance, Inc.